

LIBRARY  
SUPREME COURT, U. S.

Office-Supreme Court, U.S.

FILED

AUG 28 1961

JAMES R. BROWNING, Clerk

IN THE  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 1962

No. ~~23~~ 24

**HALLIBURTON OIL WELL CEMENTING  
COMPANY,**

**Appellant,**

*versus*

**JAMES S. REILY,**

**COLLECTOR OF REVENUE, STATE OF LOUISIANA**  
(Since Succeeded by Robert L. Roland, Who Was Duly  
Succeeded by Roland Cocreham),

**Appellee.**

**On Appeal from the Supreme Court of the  
State of Louisiana.**

**AMICUS CURIAE BRIEF BY ATTORNEY FOR  
AMERICAN CAN COMPANY**

**BEN R. MILLER**

P. O. Box 1588

Baton Rouge, Louisiana

(Attorney for American Can Company)

*Amicus Curiae*

## CONTENTS

	Page
THE QUESTION .....	1
ARGUMENT .....	4
CERTIFICATE OF CONSENT TO FILING OF AMICUS CURIAE BRIEF AND PROOF OF SERVICE .....	6

## TABLE OF CASES

<i>Best v. Maxwell</i> , 311 U.S. 454, 61 S.Ct. 335, 85 L.Ed. 275 .....	4
<i>Henneford v. Silas Mason Company</i> , 300 U.S. 557, 57 S.Ct. 524 .....	4

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1961

---

**No. 264**

---

**HALLIBURTON OIL WELL CEMENTING  
COMPANY,**

**Appellant,**

*versus*

**JAMES S. REILY,**

**COLLECTOR OF REVENUE, STATE OF LOUISIANA**

**(Since Succeeded by Robert L. Roland, Who Was Duly  
Succeeded by Roland Coereham),**

**Appellee.**

---

**On Appeal from the Supreme Court of the  
State of Louisiana.**

---

**AMICUS CURIAE BRIEF BY ATTORNEY FOR  
AMERICAN CAN COMPANY**

---

*May It Please the Court:*

**THE QUESTION**

The issue here is whether or not the State of Louisiana  
may levy a use tax which discriminates against a business

which crosses state lines, while the state levies a lesser tax on the identical transaction if there is no interstate movement.

Such unequal taxation discriminates against interstate commerce by providing a direct commercial advantage to local business; the additional tax burden upon the multi-state operator is a direct interference with the free flow of interstate commerce; and it is therefore the taxpayer's position that such discriminatory taxation is prohibited by the interstate commerce clause of the Constitution of the United States.

The Louisiana Supreme Court has held that this discrimination is not unconstitutional because it is merely "incidental." See Jurisdictional Statement pp. 27-30.

### **AMERICAN CAN COMPANY HAS A DIRECT INTEREST IN THIS CASE**

American Can Company, a New Jersey corporation with its principal office in New York City, manufactures and fabricates can-manufacturing machinery as well as replacement parts for this machinery, and can-closing machinery at its machine shops in the states of New York, New Jersey, Ohio, and California. The can-making machinery and the replacement parts used in that machinery are produced by American Can for its own use in can-making plants throughout the country, including Louisiana. All raw materials for the manufacture of the can-making machinery and the replacement parts used in that machinery are purchased outside Louisiana. The manufacturing process takes place entirely outside

Louisiana. At its machine shops situated entirely in other states, American Can Company transforms the materials purchased by it into the finished machinery and parts, some of which are subsequently shipped by American Can Company to its own plant in New Orleans. American Can Company does not sell the can-making machinery, but uses it in its own plants, one of which is situated in New Orleans, Louisiana.

The Louisiana Collector concedes that, if American Can Company made the can-manufacturing machinery in Louisiana, it would be obliged to pay a sales tax on the raw materials which were used in making that machinery, but there would be no sales or use tax upon the labor-and-shop-overhead element of the cost of the finished machinery. However, the Louisiana Collector takes the position that, if American Can Company fabricates this machinery in New York, New Jersey, Ohio, or California, and **not** in Louisiana, Louisiana may levy a two per cent use tax upon this labor-and-shop-overhead element of cost. If the machinery were fabricated in Louisiana, there would be no 2% tax on the labor-and-shop-overhead element. If the machinery is fabricated outside Louisiana, and then transported to Louisiana in interstate commerce, then Louisiana asserts its right to collect the tax in full. It is submitted that this is open discrimination against interstate commerce.<sup>o</sup>

American Can Company has paid the amount of this discriminatory use tax to the Louisiana Collector, under protest, and has entered into an agreement that it would abide by the final decision of this Court, in the present *Halliburton Oil Well Cementing Company* case. Therefore, American Can Company has a direct interest in the present litigation.

## ARGUMENT

The jurisprudence in point has been adequately presented in the Jurisdictional Statement and in other briefs *amicus curiae*. The issue is whether a state can impose a burden upon an interstate or multi-state transaction while simultaneously exempting an identical transaction which is purely intrastate from that tax burden. Can the state provide immunity from a tax to an intrastate operator who avoids crossing the state's border, and collect that same tax from those who must cross that border because they are engaged in interstate commerce?

In *Best v. Maxwell*, 311 U.S. 454, 61 S.Ct. 335, 85 L.Ed. 275 (1940), this Court said:

"The commerce clause forbids discrimination, whether forthright or ingenious. . . ."

The discrimination in the present case is "forthright." The Louisiana Collector asserts that there is no constitutional barrier to such discriminatory taxation. The Louisiana Supreme Court has upheld him.

In *Henneford v. Silas Mason Company*, 300 U.S. 557, 57 S.Ct. 524, 81 L.Ed. 814 (1936), this Court held that imposition of a use tax upon an interstate transaction was not unconstitutional in a case where the use tax was merely equal to the comparable intrastate sales tax. The validity of the use tax was upheld, we submit, only because the sales tax was equal to the use tax.

The Louisiana Collector asserts that the burden of the

use tax upon an interstate transaction may be greater than the burden of an intrastate sales tax.

It is submitted that this Court should squarely lay down the rule that a state use tax imposed upon an interstate transaction may not be greater than the state sales tax to which it is supposed to be complementary. If, however, this Court interprets the Constitution of the United States to permit a state to levy a use tax on interstate transactions which is more burdensome than the sales tax imposed on an identical intrastate transaction would be, that interpretation of the Constitution should be set forth for the guidance of businessmen who must engage in multi-state operations. In Alabama, Ohio, North Dakota, and California, the use tax cannot be greater than the sales tax because these states adopt the view that otherwise the tax would burden interstate commerce. In Louisiana the use tax can be greater than the sales tax, because the burden upon interstate commerce is said to be merely "incidental."

The issue here is one of broad implication and of importance to American business. It is submitted that the federal question here presented is substantial, and that this Court should note probable jurisdiction of this case and hear it upon its merits on briefs and oral argument.

Respectfully submitted,

BEN R. MILLER

P. O. Box 1588

Baton Rouge, Louisiana

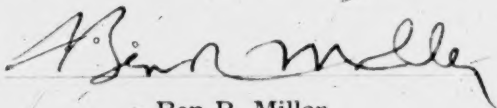
(Attorney for American Can Company)

*Amicus Curiae*

**CERTIFICATE OF CONSENT TO FILING OF AMICUS  
CURIAE BRIEF AND PROOF OF SERVICE**

I, Ben R. Miller, a member of the bar of the Supreme Court of the United States, do hereby certify that consent has been granted by both parties to this cause to filing of a brief, amicus curiae, in this cause on behalf of American Can Company, and I attach to this brief letters evidencing such consent.

I further certify hereby that I have served a copy of this brief on Honorable Roland Cocreham, Collector of Revenue of the State of Louisiana (successor in office to James S. Reily and Robert L. Roland, prior parties hereto), Appellee in connection with this appeal, by mailing same in the United States mail, postage prepaid, to his counsel of record, Honorable Chapman L. Sanford, at his office in the Capitol Annex Building, Baton Rouge, Louisiana, and that I have served a copy of this brief on Halliburton Oil Well Cementing Company, Appellant in connection with this appeal, by mailing same in the United States mail, postage prepaid, to its counsel of record, Messrs. C. Vernon Porter and Benjamin B. Taylor, Jr., at their office at 1100 Louisiana National Bank Building, Baton Rouge, Louisiana, all on this 25th day of August, 1961.



Ben R. Miller